

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for rate) DOCKET NO. 950495-WS
increase and increase in service) ORDER NO. PSC-95-1327-FOF-WS
availability charges by Southern) ISSUED: November 1, 1995
States Utilities, Inc. for)
Orange-Osceola Utilities, Inc.)
in Osceola County, and in)
Bradford, Brevard, Charlotte,)
Citrus, Clay, Collier, Duval,)
Hernando, Highlands,)
Hillsborough, Lake, Lee, Marion,)
Martin, Nassau, Orange, Osceola,)
Pasco, Polk, Putnam, Seminole,)
St. Johns, St. Lucie, Volusia,)
and Washington Counties.)
_____)

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK, Chairman
J. TERRY DEASON
JOE GARCIA
JULIA L. JOHNSON
DIANE K. KIESLING

ORDER DENYING REQUEST FOR INTERIM RATE RELIEF
AND SUSPENDING PROPOSED FINAL RATES

BY THE COMMISSION:

BACKGROUND

Southern States Utilities, Inc. (SSU or utility) is a Class A utility, which provides water and wastewater service to 152 service areas in 25 counties. SSU reported that in 1994 it served 102,514 water customers and 43,131 wastewater customers. In 1994, the utility recorded total company operating revenues of \$23,498,289 and \$16,985,104 for water and wastewater, respectively. The resulting total company net operating income for that same period was \$3,445,315 for water and \$2,690,791 for wastewater.

On June 28, 1995, SSU filed an application with this Commission for approval of interim and final water and wastewater rate increases for 141 service areas in 22 counties, pursuant to Sections 367.081 and 367.082, Florida Statutes. The utility also requested an increase in service availability charges, approval of an allowance for funds used during construction (AFUDC) and an allowance for funds prudently invested (AFPI). On August 1, 1995,

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FPSC-RECORDS/REPORTING

we determined that SSU's application was deficient because the utility did not include information for Hernando, Hillsborough and Polk Counties in its filing. On August 2, 1995, the utility filed an amended application which included facilities in those counties to meet minimum filing requirements (MFRs). That date has been established as the official date of filing.

The utility's application for increased final water and wastewater rates is based on the projected twelve-month period ending December 31, 1996. In its filing, the utility states that the rate increase is necessary because the utility did not earn a fair and reasonable rate of return on its investment. The utility requested a rate of return of 10.32 percent. This would result in additional operating revenues of \$18,645,073 for the utility's combined water and wastewater operations.

The utility's interim request is based on a projected test year ending December 31, 1995. The utility has requested interim rates which will produce additional revenues of \$7,428,460 for water operations and \$4,920,387 for wastewater operations. By letter dated August 15, 1995, the utility agreed to a 4-day waiver of the 60 day deadline set forth in Section 367.082(2)(a), Florida Statutes.

SUSPENSION OF RATES

Section 367.081(6), Florida Statutes, provides that the rate schedules proposed by the utility shall become effective within 60 days after filing unless we withhold consent to implementation of the requested rates. The above-referenced statute permits the proposed rates to go into effect, under bond, eight months after filing unless final action has been taken by the Commission.

We have reviewed the filing and considered the proposed rates, the revenues thereby generated, and the information filed in support of the rate application. We find it to be reasonable and necessary to require further amplification and explanation regarding this data, and to require production of additional and/or corroborative data. This further examination will include on-site investigations by staff accountants, engineers and rate analysts. In consideration of the above, we find it appropriate to suspend the utility's final requested rate increase.

ORAL ARGUMENT

OPC filed a request for oral argument on its motion to dismiss SSU's request for interim rates. It also filed a motion requesting

oral argument on all pending motions. OPC's motions are addressed in substance below.

Rule 25-22.058(1), Florida Administrative Code, requires a request for oral argument to accompany the pleading upon which argument is requested and to "...state with particularity why oral argument would aid the Commission in comprehending and evaluating the issues before it." OPC's motion did not demonstrate with particularity why oral argument would aid the Commission in ruling on its motion to dismiss, or on its motion to cap interim and final rates. The portion of the request seeking oral argument on all pending motions is inconsistent with the above-cited rule.

Even if OPC's motion had included specific grounds as to why oral argument would be appropriate, our procedural rules preclude parties from participating in this situation. According to Rule 25-22.0021(1), Florida Administrative Code, persons who may be affected by an item on an agenda may address the Commission, with the exception of "actions on interim rates in file and suspend rate cases and declaratory statements." We have denied similar requests to address the Commission on interim rates. See Order No. PSC-95-0573-FOF-WS¹, issued May 9, 1995, in Docket No. 940847.

In consideration of the above, we find it appropriate to deny OPC's request for oral argument on its motion to dismiss interim rates, and motion to cap interim and final rates.

SSU's SUGGESTION OF ERROR

On October 3, 1995, SSU filed a Suggestion of Error in the Staff Recommendation and Request for Approval of Interim Revenue Requirements. SSU filed an accompanying request for oral argument.

In Order No. PSC-94-1519-FOF-WS², issued December 9, 1994, we stated that a party may file a suggestion of error in order to address a mistake or mathematical error made in a staff recommendation. However, in that same order, we stated that a difference of opinion as to policy or methodology would not be considered. SSU's suggestion of error addresses our policy and methodology on interim rates. We find that it exceeds the intent of our determination regarding the appropriateness of a suggestion

¹ 95 FPSC 5:144, In re: Application for a rate increase in Duval County by Ortega Utility Company.

²94 FPSC 12:157, In re: Application for a rate increase by Florida Public Utilities Company.

of error as set forth in Order No. PSC-94-1519-FOF-WS. Therefore, we hereby deny SSU's suggestion of error. We also deny SSU's request for oral argument on its suggestion of error. As previously stated, Rule 25-22.0021(1), Florida Administrative Code, precludes parties from addressing this Commission on requests for interim rates.

INTERIM RATES

As stated earlier, SSU based its interim revenue request on a projected 1995 test year. The projected year 1995 is not based on the historical 1994 balances escalated forward but on a separate construction and financial budget which includes many additional items that were not included in 1994.

Section 367.082(1), Florida Statutes, states that upon application by a utility, the Commission may use a projected test year rate base to determine interim rates or revenues subject to refund. The language of Section 367.082(1), regarding interim rates is permissive: "Upon application by a utility, the Commission may use the projected test-year rate base when determining the interim rates or rates subject to refund." (Emphasis added). Chapter 367 was amended to include this provision in 1992. SSU, in this docket, is the first water and wastewater utility to request that a projected test year be used for interim purposes under the revised statute. As such, we have not yet addressed interim requests filed pursuant to the new provision as contained in Section 367.082(1).

Section 367.082(1), does not give any direction as to the implementation of the new provision regarding a utility's request to utilize a projected interim test year. Accordingly, we find that the procedure for reviewing a projected test year filing must be made on a case-by-case basis. We must develop sufficient guidelines as to the proper filing. SSU's request for a projected test year causes us to consider whether the statute permits the use of a fully projected interim test year or whether it is appropriate to consider only a projected test year rate base, what types of projections are allowed, and whether projections should only reflect noncontrollable items.

Before addressing the issue of the projected test year, we first address the utility's requested rate structure. We find that the uniform increase and rate structure requested by the utility in its interim filing cannot be granted. The utility's request is specifically in conflict with the First District Court of Appeal's decision in Docket No. 920199-WS. On April 6, 1995, our decision in Order No. PSC-93-0423-FOF-WS was reversed in part and affirmed

in part by the First District Court of Appeal, Citrus County v. Southern States Utilities, Inc., 656 So.2d 1307 (Fla. 1st DCA 1995). The court found that until a finding of functional relatedness of facilities and land is made, a uniform rate structure is invalid. The mandate was issued by the Court on July 13, 1995. On September 12, 1995, we implemented that decision and approved a plant-specific rate structure in Docket No. 920199-WS. We approved specific rates at our September 26, 1995 Agenda Conference. Because the utility did not provide plant-specific MFRs for those plants included in Docket No. 920199-WS, we cannot calculate stand-alone revenue requirements for those facilities.

We have reviewed SSU's interim request in great detail. We find that the utility has not established a prima facie entitlement that it is earning outside the range of reasonableness on its rate of return in its request. We find many areas in its projection that are not self-explanatory. Moreover, SSU's projections include increases in rate base and operating expenses which are discretionary rather than required. In its alternative recommendation our staff reviewed the facilities for which the utility provided specific information and addressed whether an interim rate could be calculated. However, that discussion was based on a historical test year, and limited to the stand-alone systems in the utility's filing. The utility did not request that we consider an historic test year. For the reasons set forth above, and the discussion set forth below, we find it appropriate to deny SSU's request for interim rates based upon a projected test year.

While we have determined to deny SSU's interim request at this time, we recognize that the circumstances in this docket are unusual, particularly the timing of the decision in Docket No. 920199-WS and the untested nature of a projected interim test year. While we will not rule now on the merits of any refiled petition, because of the unique nature of this case, the utility may, if it chooses, file another petition for interim rates. Should it do so, the utility is advised to consider the findings made herein as direction as to the proper filing.

Projected Test Year Rate Base

Section 367.082(1) states that we may use a "projected test-year rate base" to determine interim rates (Emphasis added). However, the use of a projected rate base only, without corresponding projections in areas such as capital structure, expenses and billing would result in a mismatch of rate base component in the test year. We are concerned that to broaden a projected test year to include more than the rate base would exceed the clear meaning of Section 367.082(1).

Rate Base

SSU's requested 1995 budget includes \$27,015,825 in total plant additions. SSU filed a summary of plant-in-service additions by priority, itemized by year and category of additions. Only the categories of Safety and Regulatory Mandate (approximately \$13 million) appear non-discretionary. The others: Growth, Quality of Service and General Improvements (approximately \$13.5 million), appear to be discretionary items.

Additionally, \$14 million of the total 1995 additions were projected to be placed into service in December, 1995. We find it to be unrealistic that so many additions will be made in the last month of the projected test year. The majority of these additions should be fully scrutinized and are only appropriate to be considered for final rates. To include these amounts in a projected interim calculation exceeds the intent of the interim statute. While we could attempt to remove plant additions by facility related solely to growth, quality of service and/or general improvements, the complexity of SSU's filing would make it difficult to make corresponding adjustments.

Net Operating Income

SSU has projected increases of 2.94 percent for water and 11.96 percent for wastewater to Salaries and Wages for 1995. The utility stated that these increases were due to merit, promotions, licenses and incentives. However, the utility decreased the number of employees due to vacancies. Employee Pensions and Benefits were increased by 6.65 percent for water and 16.00 percent for wastewater. The utility explained that these increases were caused by escalations in medical costs, other post employment benefit costs, and its employee pension plan.

SSU has also increased 1995 purchased power expenses for water by 22.30 percent. The majority of this increase relates to weather normalization adjustments for the University Shores, Deltona and Marco Island water plants. Chemicals expense for 1995 has been increased by 80 percent for water and 17.05 percent for wastewater. The utility stated that these increases are due to anticipated changes in treatment methods, the addition of new pumps, anticipated increased usage and plant expansions.

Another major adjustment to 1995 is the construction of a new central laboratory. This has increased general plant by approximately \$1 million dollars in 1995. In order to calculate its 1995 O&M expense budget, SSU assumed that all laboratory services would be performed by outside contractual services.

However, in order to expedite the budgeting process for 1995, SSU assumed that outside contractors would be used for the entire year. SSU then reflected the expected cost reduction due to bringing the laboratory in-house, as a \$100,000 credit to an unallocated administrative cost center. As such, the 1995 rate base includes the major cost of the laboratory, with no reduction made to the individual plants for the decrease in expenses.

The utility's filing projected increases of 27.9 percent for water and 18.89 percent for wastewater for total miscellaneous expenses. This is an extraordinary increase for a change from an historical to a projected budget year.

Based on our review and analysis of SSU's projected 1995 interim test year, it appears that many of the increases reflect the most optimal scenarios put forth by the utility in both controllable and uncontrollable expenditures. It also appears that the utility is picking and choosing what it includes or does not include for interim relating to some known decreases that did occur in 1995. Therefore, we find that the utility's 1995 budget is not reasonable for the determination of interim rates.

OPC'S MOTION TO DISMISS

On August 30, 1995, the Office of Public Counsel (OPC) filed a Motion to Dismiss SSU's Request for an Interim Increase in Rates, requesting that the Commission deny SSU interim rate relief because the utility based its request on a budgeted interim test year. OPC contended that while Section 367.082, Florida Statutes, permits a projected test year rate base, it does not allow the use of projected revenues and expenses when calculating interim rates. OPC argued that because the utility calculated a rate of return deficiency based on projected and budgeted amounts of revenue, expense, and rate base, its request for interim rates should be dismissed. SSU filed a response to OPC's motion on September 6, 1995, contending that OPC does not have standing to participate in the interim decision and that OPC's motion was untimely.

Interim rates "attempt to make a utility whole during the pendency of the proceeding without the interjection of any opinion testimony." Citizens v. Florida Public Service Commission, 435 So.2d 784, 786 (Fla. 1983). The interim statute establishes a prima facie entitlement for interim rates. The utility must meet certain requirements in order to establish this prima facie case. Section 367.082, Florida Statutes, and our procedures do not contemplate parties filing a response or motion regarding a utility's request for interim rates.

The utility has a statutory right to request interim rates. This Commission will grant a utility's interim request provided the utility establishes a "prima facie entitlement", Section 367.082(1), Florida Statutes. In fact, we have denied SSU's request for interim rates herein. However, we find that OPC's motion to dismiss the interim rate request is an inappropriate motion and shall be denied. Even if we were to consider the motion as a request to deny interim rates, the motion is moot because of our decision herein.

OPC'S MOTION TO CAP SSU'S RATES

On September 15, 1995, OPC filed its Motion to the Full Commission to Cap SSU's Maximum Interim and Final Rates in this Proceeding to the Rates Requested by SSU. On September 22, 1995, SSU timely filed a Response to OPC's motion.

In its motion, OPC argued that we should limit the ultimate maximum interim and final rates to those maximum rates requested in the MFRs, those noticed to customers, and those provided by SSU in supplemental materials sent to its customers. In its response, SSU requested that we strike OPC's motion because OPC lacks standing to participate in an interim rate determination.

We find that, in light of our decision to deny interim rates, OPC's motion to cap interim rates is moot. As to the portion of OPC's motion which addresses final rates, we find that determination is premature, and instead that point may be made an issue in the rate proceeding.

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that the final rates and schedules proposed by Southern States Utilities, Inc., are hereby suspended in accordance with Section 367.081(6), Florida Statutes. It is further

ORDERED that the request for interim increase in water and wastewater rates by Southern States Utilities, Inc., is hereby denied. It is further

ORDERED that each of the findings made in the body of this Order is hereby approved in every respect. It is further

ORDERED that the Motion to Dismiss SSU's Request for Interim Increase in Rates, and Motion to Cap SSU's Maximum Interim and Final Rates in this Proceeding to the Rates Requested by SSU, filed by the Office of Public Counsel, are hereby denied. It is further

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ORDERED that the requests for oral argument filed by the Office of Public Counsel are hereby denied. It is further

ORDERED that the Suggestion of Error and Request for Oral Argument filed by Southern States Utilities, Inc., is hereby denied

By ORDER of the Florida Public Service Commission, this 1st day of November, 1995.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

by: Kay Johnson
Chief, Bureau of Records

(S E A L)

MEO

DISSENTS:

Commissioner Johnson dissented as to the denial of the utility's request to address the Commission on its Suggestion of Error.

Commissioner Deason dissented as to the denial of interim rates that recognized that the utility may file another petition for interim rates. Commissioner Deason would instead deny the interim rates requested by the utility.

Commissioner Deason dissented as to the determination that the Office of Public Counsel's motion to dismiss was inappropriate, and would instead find that the motion was moot.

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.038(2), Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.